THE SCOPE OF INTERPLEADER. — The bill of interpleader is given to one in the position of an innocent stakeholder who is ready to do his duty in order to free him from subjection to two suits and the possibility of a double liability. The bill, being thus founded on obvious principles of equity and fairness, should be treated by the courts in a liberal spirit, and as far as possible be free from technical requirements. This has been the tendency in England, but our own courts and legislatures seem loath to extend the scope of the remedy.

The requisites of the suit are, roughly speaking, ten in number. 1. The adverse claims must be mutually exclusive.[1] It would be manifestly unjust to make the claimants fight each other when the validity of one claim is not dependent upon the invalidity of the other; there can then be no dispute between the claimants. For this reason, if one of the claimants gets a verdict or judgment the bill no longer lies.[2] 2. The complainant in the interpleader suit must be willing to bring into court or surrender all that is claimed by either defendant.[3] If he has a counterclaim against either claimant he cannot have it determined in such a proceeding. 3. The position of the stakeholder must be such a precarious one that he really needs the help of equity to prevent injustice. Thus, one who is in possession of land claiming no title need only move out. So also the bill does not lie if all the claims would be settled in one suit at law,[4] or if one of the claims is clearly invalid,[5] or both are illegal.[6] 4. There must be no collusion between the complainant and either claimant.[7] The bill lies to help only a disinterested stakeholder. 5. The stakeholder must not have been placed in his precarious position through his own fault;[8] and he must not be guilty of laches in pursuing his remedy. 6. If equity is unable to enjoin the prosecution of one of the claims at law, it can give no relief. This was brought out in a recent case where a state court declined to entertain a bill because it could not enjoin a federal court from enforcing its judgment. *Smith* v. *Reed*, 70 Atl. 961 (N. J., Ch.).

These six requisites are based on sound principles of justice. The following, although supported by authority, are extremely technical and will be found upon examination to have a doubtful equitable basis. 7. It is often required that all the claims be derived from a common source.[9] This is a survival of the narrow view of interpleader held by the common law. The requisite of privity is foreign to the purpose of the bill; for the position of a stakeholder is equally precarious irrespective of the sources from which the defendants derive their claims. The refusal to allow an interpleader therefore seems unsound.[10] 8. It is sometimes required that the stakeholder have no claim or interest in the stake.[11] If the

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1 Nat'l Life Ins. Co. *v.* Pingrey, 141 Mass. 411; Bassett *v.* Leslie, 123 N. Y. 396.
2 See Maxwell *v.* Leichtman, 65 Atl. 1007 (N. J. Eq.).
3 M & H. R. R. *v.* Clute, 4 Paige (N. Y.) 384.
4 Fitts *v.* Shaw, 22 R. I. 17.
5 M. & H. R. R. *v.* Clute, *supra.*
6 Applegarth *v* Colley, 2 Dowl. N. S. 223.
7 Murietta *v.* South Amer. Co., 62 L. J. Q. B. N. S. 396.
8 Horner *v.* Willcocks, 1 Ir. Jur. o. s. 136.
9 First Nat'l Bank *v.* Bininger, 26 N. J. Eq. 345. This arises most often where a bailee is seeking to interplead his bailor and one claiming by a paramount title. The requisite of privity in this case had some basis at common law where a bailee could not dispute his bailor's title; but it is now settled that he may if he claims under the authority of a third party. See Thorne *v.* Tilbury, 3 H. & N. 534; 17 HARV. L. REV. 489.
10 See Crane *v.* McDonald, 118 N. Y. 648; 17 HARV. L. REV. 489.
11 See 4 Pomeroy, Eq. Jurisp., 3 ed., § 1325; Maclennan, Interpleader, 64.

amount of the stakeholder's charge is disputed, the bill will not lie;[12] but it is otherwise if the claim is available against and admitted by both defendants.[13] The result should be the same where the lien is available against only one of the defendants, if he does not dispute it. Hence this requirement is really covered by the second above. 9. The stakeholder must have incurred no collateral or independent liability to either claimant;[14] since, it is argued, one of the claimants may be subjected to two suits to enforce his rights. On the contrary — and this seems to be the better and more modern view — the bill will settle once and for all the ownership of the *res;* and it may settle the whole controversy.[15] The fact of the collateral liability is immaterial and relief should therefore be granted. 10. Lastly, it is insisted that the same thing, debt, or duty, must be claimed by all the defendants.[16] This however seems unnecessarily refined in its technicality. So long as the claims are mutually exclusive, and the stakeholder is willing to bring into court the full amount claimed by either, it would seem that he should be entitled to maintain his bill. And indeed in a few cases it has so been held.[17]

CONVERSION OF A MORTGAGE INTO AN ABSOLUTE CONVEYANCE. — Where a deed absolute in its terms is given as security for a debt and simultaneously there is executed an agreement of defeasance the two instruments will be construed together as a mortgage;[1] and if they do not refer to each other parol evidence may be introduced to connect them.[2] Indeed, if the deed be given as security it will be treated as a mortgage though there be no written defeasance contract.[3] Although the admission of parol evidence to establish a mortgage would seem to contradict the deed in violation of the parol evidence rule, it may be justified as preventing fraud and unjust enrichment.[4] However, the presumption from an absolute deed is that it operates according to its terms, and it has even been held that an oral defeasance agreement must be established beyond reasonable doubt.[5]

At common law a mortgage, whatever its form, vests the legal title to the land in the mortgagee subject to an equity in favor of the mortgagor.[6] Where the defeasance agreement is separate from the deed, this equity of redemption may be extinguished and the conveyance made absolute without a formal release or a new deed. If the defeasance is not in writing a parol agreement whereby the mortgagee is to be regarded as the unconditional owner will be effective.[7] While if the defeasance is in a written instrument an agreement that the mortgagee shall take an absolute fee,[8] or a

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[12] Lawson *v.* Warehouse Co., 70 Hun (N. Y.) 281.
[13] Gibson *v.* Goldthwaite, 7 Ala. 281.
[14] Bartlett *v.* His Imperial Majesty, 23 Fed. 257; Crawshay *v.* Thornton, 2 My. & C. 1. *Contra*, Attenborough *v.* London, etc., Co., 3 C. P. D. 450 (statutory).
[15] See *In re* Mersey Docks, [1899] 1 Q. B. 546.
[16] Slaney *v.* Sidney, 14 M. & W. 800. See 4 Pomeroy, Eq. Jurisp., 3 ed., § 1323.
[17] Thomson *v.* Ebbets, Hopk. Ch. (N. Y.) 272.

[1] Mooney *v.* Byrne, 163 N. Y. 86.
[2] Gay *v.* Hamilton, 33 Cal. 686.
[3] Preschbaker *v.* Heirs of Feaman, 32 Ill. 475.
[4] See Bank *v.* Sprigg, 1 McLean (U. S.) 178, 184.
[5] Ensign *v.* Ensign, 120 N. Y. 655.
[6] Hunt *v.* Hunt, 14 Pick. (Mass.) 374, 382.
[7] Shaw *v.* Walbridge, 33 Oh. St. 1; Cramer *v.* Wilson, 202 Ill. 83.
[8] Scanlan *v.* Scanlan, 134 Ill. 630.